

Legislators And Law Enforcement Introduce Overhaul Of State's Criminal Drug Laws

Revised Statute Will Address Complexity, Disparities, Serious Repeat Dealers

A bipartisan group of legislators joined the Delaware Department of Justice Thursday in introducing legislation to address some long-identified issues of complexity and conflict in Delaware's criminal drug laws, as well as to make the laws more fair and increase penalties for repeatedly convicted drug dealers. If passed, the state's criminal drug laws will be easier to apply, and potential disparate impacts that the current laws have on residents of the state's urban areas will be eliminated.

Reducing Complicated Drug Code Factors

Delaware's existing criminal drug laws impose penalties that are generated by a complicated calculus of five different weight classes, six different "aggravating factors," and multiple types of "prior qualifying offenses."

The proposed changes to the drug code will collapse the five weight classes into three, and eliminate several of the aggravating factors, creating a framework that is easier to apply and does not contain a number of internal inconsistencies that exist in the current law.

"Prosecutors and law enforcement officers have been saying for some time that a more straightforward, coherent criminal drug code was needed in order to ensure fair and proportional sentences," said Delaware Attorney General Matt Denn. "We are

grateful for the advice and participation of the law enforcement community in crafting these changes.”

The Delaware Police Chiefs’ Council backs the draft legislation, stating through its Executive Director Jeffrey Horvath “The Delaware Police Chiefs’ Council has reviewed the proposed revisions to the current drug code and is in support of the changes. We feel this is a positive step in simplifying the current drug code.”

Eliminating Disparities

The revised drug code will also eliminate potential disparities in the existing drug laws between city residents and those who live in suburban and rural areas. Currently, the penalties for drug crimes may be aggravated – and minimum mandatory sentences may be triggered – when those crimes occur within 1000 feet of a park or a place of worship. Because churches and parks are heavily concentrated in urban areas, particularly in the City of Wilmington, these aggravating factors can create disproportionate penalties for residents of those areas. The proposed legislation would eliminate proximity to parks and places of worship as aggravating factors.

“The drug laws, as currently written, effectively create a more serious offense of ‘committing a drug crime in the City of Wilmington,’” said Senate Majority Leader Margaret Rose Henry, a prime sponsor of the legislation. “This has a disproportionate impact on low-income and minority residents of the city. The passage of this law will eliminate that racial and economic disparity.”

Linwood Jackson, President of the Delaware State NAACP, said “The NAACP supports all efforts that result in smarter, results-based criminal justice policies that keep our communities safe. This effort is designed to achieve judicial equity in sentencing by ending racial disparities at all

levels of the criminal justice system.”

Heightened Penalties for The Most Serious Repeat Drug Dealers

The proposed legislation also seeks to impose heightened criminal penalties on major drug dealers who re-offend after being previously convicted of major drug dealing offenses.

“Unlike other provisions in our criminal code, where there are heightened mandatory penalties for serious offenders who are convicted of the same offense over and over, our drug code has no such heightened penalties,” said Representative Larry Mitchell, the prime House sponsor of the bill. “Individuals who commit serious drug dealing offenses for the second, third, or tenth time after being convicted and sentenced for a previous serious dealing offense get the same mandatory sentence as they did for the first offense. Drug dealing remains a serious problem in our communities, and this bill will ensure that the most serious drug dealers who are convicted, serve time, and then go out and start dealing drugs all over again receive an appropriately heightened penalty.”

This new provision addresses a gap that was created by the passage of last year’s habitual offender statute. Under the old habitual offender law, a third major drug dealing offense resulted in a mandatory life sentence. However, all drug offenses were removed from the mandatory sentencing provisions of the habitual offender statute, so as a result there are no heightened mandatory sentences at all under the current code for repeat offenses of the criminal drug laws – only the existing two-year mandatory sentence that exists for the most serious drug dealing offenses.

Providing Uniformity In the Presentation of Evidence in Drug Cases

Finally, the legislation provides certainty for prosecutors in the application of a 2015 Delaware Superior Court opinion that approved of the use of “hypergeometric sampling” in making

initial (“prima facie”) determinations in criminal cases as to whether a quantity of drugs seized in a criminal case is, presumptively, all of the same type as a portion that was sampled.

Of the legislation as a whole, which will be released for introduction Thursday, sponsor and House Minority Leader Danny Short said, “These changes will make our drug laws more coherent and streamlined. Once implemented, these prudent modifications will improve the application of criminal justice in Delaware.”

The Delaware State Fraternal Order of Police is also in support of the legislation.

Sponsorship of the two bills that make up the proposal will include Sen. Henry, Rep. Mitchell, Rep. Short, Senate Minority Whip Gregory Lavelle, Speaker of the House Peter Schwartzkopf, Sen. John Walsh, Sen. Bruce Ennis, Rep. Deborah Hudson, Rep. Earl Jaques and Rep. Helene Keeley.

Text of the two bills being introduced is attached.

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